

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on March 12, 2001
at 3:00 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Bill Tash (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: None.

Members Absent: None.

Staff Present: Melissa Rasmussen, Committee Secretary
Mary Vandebosch, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 477, 3/8/01
HB 459, 3/7/01
HB 473, 3/7/01
Executive Action: none

HEARING ON HB 477

Sponsor: REP. DAVE KASTEN, HD 99, Brockway

Proponents: Kim Kafka, Self
John Bloomquist, MT Stockgrowers
Ken Mesaros, Self
John Youngberg, MT Farm Bureau
Don Allen, WETA

Opening Statement by Sponsor:

REP. DAVE KASTEN, HD 99, Brockway, stated that the purpose of the bill is to equate the fees charged for an EIS to the cost of gathering information required for a project.

Proponents' Testimony:

Kim Kafka, Representing himself, handed out a packet of information to the committee **EXHIBIT(nas56a01)**. He informed the committee that he served on the Governor's negotiating rule making team. He provided the committee with a personal example of an EIS that was triggered because of actions taken on his family farm. He informed the committee of the projects cost that was unfairly charged. He warned that without fine tuning MEPA is nothing but a weapon.

John Bloomquist, MT Stockgrowers, stated that the bill clarifies the calculation of a project. He declared that the current process has the potential to inflate the project costs. He told the committee that the EIS cost should not include an individuals personal assets.

Ken Mesaros, Representing himself, informed the committee that when he served on the interim committee that studied MEPA. He charged that the projects cost should only include the cost of analysis, they should not reflect the proposed changes.

John Youngberg, MT Farm Bureau, told the committee that they participated in the interim study. He declared that the bill was one of the issues discussed during the EQC study.

Don Allen, WETA, stated that for the reasons already expressed, they support the bill.

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA pointed out that the fiscal note **EXHIBIT (nas56a02)** states that currently property assets are not included in an EIS. She asked why there was a contradiction between what he said and what the fiscal note says. **Mr. Kafka** clarified that he had to pay 2% of the project cost. His true project cost was a fence. The department came back and included his currently owned land and animals. Todd Everts told him that the MEPA process is not written for the diversification of agriculture. **Bob Lane, Chief Legal Council Fish, Wildlife & Parks**, told her that they took into account previous assets only once on a game farm application. They did not do an EIS on **Mr. Kafka's** farm. In his initial project the cost did include the land. He proclaimed that the game farm EIS cost \$63,000. That cost included the land. If they had not included the land the applicant would have paid \$8,500 of the \$63,000. When they did the EIS they took into account game farm operations and the controversy surrounding them. He stated that the department is not taking a position on the bill.

SEN. BEA MCCARTHY asked what the cost was to the department. **Mr. Lane** told her that the cost he gave previously was the cost to the department to conduct the EIS. **SEN. MCCARTHY** asked if what the individual was assessed was the cost of the work done by the state. **Mr. Lane** told her that the cost assessed to the applicant was slightly over \$25,000. It was appealed, but the court upheld the cost. At that time the game farm withdrew their appeal.

SEN. LORENTS GROSFIELD questioned if by including the property the cost was \$63,000 and it only cost the state \$25,000 to conduct the study, what was the game farm charged. **Mr. Lane** stated that he confused the issue. It actually cost the department \$63,000 to conduct the study and the applicant paid \$25,000. If they had not included the land they could have only charged \$8,500. **SEN. GROSFIELD** asked if the department paid the rest. **Mr. Lane** said that was correct. **SEN. GROSFIELD** inquired if the cost was high because of the controversy surrounding game farms. **Mr. Lane** told him that was not part of the cost. They simply felt they needed to do what the law required and what was fair.

Closing by Sponsor:

REP. KASTEN professed that the bill will clarify many of the types of questions that have been raised during the hearing. He stated that it is a process.

HEARING ON 459

Sponsor: REP. DOUG MOOD, HD 58, Seeley Lake

Proponents: John Bloomquist, MT Stockgrowers
Frank Crowley, ASARCO
Paul Buckley, Golden Sunlight Mine
Cary Hegreberg, MT Wood Products Association
Mike Collins, Self
Bruce Vincent, League of Rural Voters
Rick Jordan, Self
Ed Regan, RY Timber
Don Serba, Pulp and Paper Workers
Kim Liles, Pulp and Paper Workers
Ken Mesaros, Self
Peggy Trenk, MT Association of Relators
Byron Roberts, MT Building Industry Association
Aidan Myhre, MT Chamber of Commerce
Charles Brooks, Billings Chamber of Commerce
Russ Ritter, Washington Corporation
Gail Abercrombie, MT Petroleum Association
John Semple, MT Cattlewoman
John Youngberg, MT Farm Bureau
Mike Murphy, MT Water Resource Association
Don Allen, WETA
Jim Mockler, MT Coal Council
Pat Keim, BNSF

Opponents: Anne Hedges, MEIC
Larry Campbell, Self
Janet Ellis, MT Audubon
John Wilson, MT Trout Unlimited
Sherm Janke, Self
Julia Page, Northern Plains Resource Council
Jeff Barber, MT Wildlife Federation, MT Chapter of
the American Fishery Society,
Betty Whiting, MT Association of Churches
Jim Sweaney, Self
Wade Sikorski, Self
Bill LaCroy, Third Growth Native Plants
Doug Soehren, Self
Paul Roos, Self

Opening Statement by Sponsor:

REP. DOUG MOOD, HD 58, Seeley Lake, read aloud from the document put together by the MEPA interim subcommittee. He explained that when MEPA passed, the intent was economic development of the state. MEPA is a mirror of NEPA. He stated that problems accrued from a lack of definition in the law. He charged that MEPA is a good philosophy, but good philosophy does not necessarily equal good law. The bill attempts to provide direction to the agencies for studies conducted under the MEPA law. The language in the bill provides structure and affirms the manner in which the legislature wants agencies to conduct MEPA studies. He stated that it is important to know the alternatives and their impacts. Page two points out that it is mandatory to study economic advantages and disadvantages. The language balances information from the agency to the project sponsor. If you have negative analysis there has to be positive analysis presented along with it. He charged that during the House debate it was obvious that people did not understand the MEPA process. They did not realize that the project sponsor is involved intimately in the process. However, the language is not exclusive to the project sponsor. He stated that MEPA is not an end in itself, it is a study. The bill clarifies that.

{Tape : 1; Side : B}

Proponents' Testimony:

John Bloomquist, MT Stockgrowers, charged that during the MEPA process it is important to clarify alternatives. He stated that MEPA lacks definition. The bill establishes alternatives and sideboards. It provides for an effective review process and consultation. He argued that the bill establishes the need for full analysis in an EIS. He stated that the bill has a light impact on MEPA.

Frank Crowley, ASARCO, handed out a letter from **Douglas Parker, ASARCO, EXHIBIT (nas56a03)**. He stated that the bill provides reasonable alternatives that are technically feasible. He referenced the letter by **Mr. Parker**, and pointed out the money wasted on studies that have no pertinent meaning.

Paul Buckley, Golden Sunlight Mine, spoke in favor of the bill and submitted written testimony **EXHIBIT (nas56a04)**. He asked that his testimony be applied to HB 459 and HB 473.

Cary Hegreberg, MT Wood Products Association, expressed his support for the bill because it establishes necessary parameters around MEPA. He questioned how many lawsuits are necessary before a review can take place. He charged that now is a good time to revisit the law. He handed out a packet of economic

information and lawsuit examples **EXHIBIT (nas56a05)**. He pointed out to the committee certain lawsuits that have had a devastating impact on Montana. He stated that millions of dollars could have been generated for school trust lands, but lawsuits have stopped that. He argued that timber sales cannot take place because of problematic lawsuits. In the past ten years the Swan State Forest has forgone a sustainable harvest of approximately 92 million board feet. In terms of a dollar amount that is 18 million dollars to the school trust and a loss of 185 jobs annually. He stated that the DNRC cannot sell timber because of a couple of lawsuits that opponents say are not a problem. He speculated that harvesting dead and dying timber would have positive impacts down the road. Not managing the state forest lands led to numerous fires. It is important to look at the possible impacts.

Mike Collins, Representing himself, informed the committee that he is a small mine owner. He asserted that MEPA has created a process that does not allow for mistakes. He urged the committee to pass the bill because it would contribute to employment in the state.

Bruce Vincent, League of Rural Voters, spoke in favor of the bill and submitted written testimony along with a petition signed by the League of Rural Voters **EXHIBIT (nas56a06)**.

Rick Jordan, Representing himself, spoke in favor of the bill and submitted written testimony **EXHIBIT (nas56a07)**.

{Tape : 2; Side : A}

Ed Regan, RY Timber, recounted for the committee a lawsuit that incurred due to MEPA. As a result of the lawsuit RY Timber lost the entire Black Tail timber sale. He declared that the lawsuit was not filed until eight months into the sale.

Don Serba, Pulp and Paper Workers, charged that the proposed changes do not weaken MEPA. He stated that it is time to revise MEPA for the future of Montana's economy.

Kim Liles, Pulp and Paper Workers, stated that nothing is forever, it's time to revise MEPA.

Ken Mesares, Representing himself, declared that the bill does not weaken the protection of the environment. It does not curtail public involvement and it retains the look before you leap policy. The bill creates a necessary balance. He stated that the subcommittee recognized that more definitions are necessary in order to make this an effective process.

Peggy Trenk, MT Relators Association, informed the committee that major subdivisions fall under MEPA. If the MEPA process was applied to housing developments the cost of housing would increase.

Byron Roberts, MT Building Industry Association, stated that construction is one of the largest industries in the state. He urged the committee to support the changes to the bill.

Aidan Myhre, MT Chamber of Commerce, expressed their support for the bill.

Charles Brooks, Billings Chamber of Commerce, spoke in favor of the bill and submitted a document sighting the position of the chamber **EXHIBIT (nas56a08)**.

Russ Ritter, Washington Corporation, expressed his support for the bill and asked that his remarks apply to both HB 459 and HB 473.

Gail Abercrombie, MT Petroleum Association, spoke in favor of the bill.

John Semple, MT Cattlewoman, spoke in favor of the bill.

John Youngberg, MT Farm Bureau, spoke in favor of the bill.

Mike Murphy, MT Water Resources Association, spoke in favor of the bill.

Don Allen, WETA, spoke in favor of the bill.

Jim Mockler, MT Coal Council, spoke in favor of the bill.

Pat Keim, BNSF, spoke in favor of the bill.

Opponents' Testimony:

Anne Hedges, MEIC, declared that she agreed with 95% of the bill, even if it is narrow. She charged that the bill makes it difficult for an agency to do their job and stay out of court. She stated that the EPA has spent 19 million dollars in Libby. They still need 14 million dollars just for this year. Numerous mines have cost the state millions of dollars in liability. She argued that the main problem with the bill was on page two, line seven. She warned that the phrase "economically feasible" has the potential to get the state into trouble. She proclaimed that the state cannot determine the definition of economically

feasible. The bill forces the project sponsor into a bad position.

Larry Campbell, Representing himself, declared that the Sula State Forest has been managed without any appeals or litigation. He said that the state managed the forest and a greater percentage of that forest burned during the fires of 2000. He hypothesized that it burned because of the improper disposal of slash when loggers harvested the forest. He charged that the current carpet of slash in the Sula State Forest is setting the state up to incur a large cost in the future.

Janet Ellis, Audubon, spoke in opposition to the bill and submitted written testimony **EXHIBIT (nas56a09)**.

John Wilson, MT Trout Unlimited, professed that he had a problem with the language on page five. He argued that the language makes each school district a project sponsor. He said that it gives the school the ability to request a review of each alternative proposed in an EA or EIS. He added that this would cause delays in the permitting process and create a system of chaos. He argued that it places the school district against the environment.

Sherm Janke, Representing himself, questioned who pays under the bill. He stated that the project sponsor can protest and the state will end up picking up the tab. He said if the sponsor cannot afford the analysis then fewer alternatives will be available.

{Tape : 2; Side : B}

Julia Page, Northern Plains Resource Council, stated that the bill complicates MEPA, adds more time to the process, cost more taxpayer money and sets up a subjective standard for what alternatives should be considered in the analysis. She argued that the term economically feasible is relative and the bill does not provide a definition. That allows the project sponsor to determine that any alternative is economically unfeasible. The bill is bad because it sets up a subjective standard.

Jeff Barber, MT Wildlife Federation, MT Chapter of the American Fishery Society, charged that the lack of definition for economically feasible is harmful. If the language was removed there would be no problem with the bill. He stated that more analysis would be meaningful for the process.

Betty Whiting, MT Association of Churches, charged that the bill throws MEPA out of balance by placing an emphasis on economic

feasibility. She urged the committee to keep creation beautiful. She commented on the groups belief that technology does exist and can be developed in a way that would allow industry to work in the state and still protect the quality of the environment.

Jim Sweaney, Representing himself, urged the committee to kill the bill.

Wade Sikorski, Representing himself, urged the committee to vote against the bill. He proclaimed that states with the strictest environmental protection have the highest growth rates and the least amount of unemployment.

Bill LaCroy, Third Growth Native Plants, stated that there is not an accounting system adequate in the bill. The bill does not convince him that it supports future generations.

Doug Soehren, Representing himself, informed the committee that he has been working with a group to help protect the Bitterroot. He charged that MEPA has never been used to hinder or slow down timber sales. He claimed that the MEPA study showed that there was no need for changes.

Paul Roos, Representing himself, expressed his concern that the language would make the situation worse.

Informational Testimony:

Haley Beaudry, Professional Engineer, informed the committee that he has studied, performed and conducted economic evaluations. He stated that there is a science of economics and a way to evaluate it effectively.

SEN. BEA MCCARTHY, SD 29, Anaconda, stated that she was the Chair for the MEPA interim subcommittee. She said that the issue was thoroughly discussed by the committee, but they felt this issue could not be decided by only seven people. She declared that the bill is a part of that study.

Mary Westwood, Representing herself, stated that she was concerned with economically feasible. She was troubled with the need to get into the books of a company. She warned that exposing a companies economics creates competition problems.

Questions from Committee Members and Responses:

SEN. MCCARTHY asked **REP. MOOD** if there was a fiscal note attached to the bill. He informed her that yes there was.

SEN. COCCHIARELLA asked **REP. Mood** for a definition of three terms in order to understand the bill, economically feasible, due weight and consideration and reasonable. **REP. MOOD** told her that alternatives are not written in a vacuum. Not everyone has input, including the project sponsor. He stated, for example, when a mine applies for a permit they go through an extensive process to see if the project is something that makes sense or is economically feasible. The term economically feasible is different depending on who is applying for the permit. He stated that if the project is not economically feasible then there has to be a no action alternative. He read aloud from the rules that state the agency must be aware of all realistic alternatives.

SEN. COCCHIARELLA asked if reasonable was only defined by the project sponsor. He told her that just because an alternative is available, it may not be reasonable.

{Tape : 3; Side : A}

SEN. MIKE TAYLOR asked **John North, Chief Legal Council for the DEQ**, if economically feasible was not defined would that create a problem for the department. **Mr. North** told him that the given language would force them to hire an outside entity to examine the economics of a situation. He added that any clarity to the language would help.

SEN. GROSFIELD questioned if the word appeal needed to be changed. **Michael Kakuk** informed him that the word appeal should be review.

SEN. GROSFIELD asked if the word "institutional" would exempt each school district from becoming a project sponsor. **REP. MOOD** stated that the language clarifies that the trusts being referred to were the school trusts. He stated that under current law a school district can appeal a MEPA document. **SEN. GROSFIELD** inquired why the House chose not to further define that term. **REP. MOOD** declared that in the fiscal note the DEQ stated that they would contract for approximately \$5,000 per project and an estimated two EIS' per year. They would contract with an outside firm, and that firm would be responsible for the economic balances.

SEN. BILL TASH asked **Mr. North** if better language for the bill would be cost benefit analysis. **Mr. North** informed him that that was a different concept.

SEN. GLENN ROUSH inquired if the sponsor would agree to an amendment that would define the term economically feasible. **REP. MOOD** told him that the term was not a major problem. He did not

want to complicate the matter further by adding unnecessary language.

SEN. KEN TOOLE questioned the impact the bill would have on business. **Mr. Ritter** told him that business is a daily risk. It is easier to operate using hindsight, but that is not possible.

SEN. TOOLE asked if reform of MEPA even begins to rise to the level of other business issues. **Mr. Ritter** stated that MEPA reform has nothing to do with the immediate problem, but it will help the long term.

SEN. TOOLE inquired if an economic analysis of a no action alternative is conducted, is there a concern that it will include potential for coming back and doing the proposed action later. He questioned if that was the intent of thorough analysis. **REP. MOOD** stated that could be a part of a no action alternative, but historically that has not been the case. He charged that the intent is to not only focus on the negative aspects of a project, but the positive as well. **SEN. TOOLE** asked what were the underlying substantive laws. **REP. MOOD** told him that the main one's are the clean air and clean water acts. **SEN. TOOLE** wondered if they were adopted before MEPA. **REP. MOOD** told him it was after. **SEN. TOOLE** asked if when MEPA was adopted if it's intent was to be procedural in implementing other environmental laws, considering those laws were adopted after the fact. **REP. MOOD** proclaimed that MEPA and NEPA are essentially mirror images. They are both a result of DDT use. All the information about DDT and it's affects was available to the federal government, all they had to do was look at it. He charged that we are at the end of the Industrial Revolution. It is time to change the laws and make them appropriate for the Information Age. Many of the laws enacted during that time are inappropriate for today's economic environment.

SEN. GROSFIELD asked how **Ms Hedges** would better define economically feasible. **Ms Hedges** charged that the model rules are working. She questioned what needs to be fixed. She stated that it is important to have clear examples. She asked for a specific example of when an agency conducted a study and ignored the economics of it. The language will limit certain alternatives studied. She claimed that agencies already do what the bill suggests.

SEN. GROSFIELD inquired when this similar concept was debated before. **Mr. North** told him that he did not remember that particular debate.

SEN. GROSFIELD questioned agencies looking too far into a project sponsor's financial records. **REP. MOOD** professed that was not a concern. The agencies already have the means to determine the economics of a project sponsor.

{Tape : 3; Side : B}

SEN. COCCHIARELLA asked what the intent of the legislation was. She stated that opponents to the bill were bothered by the term economically feasible. She questioned protecting the books of a company. She inquired if there is an economic test who decides what is revealed. **REP. MOOD** proclaimed that companies send their financial statements into companies like Dunn and Broadstreet to be analyzed. The project sponsor works closely with the agencies when they apply for a permit. **SEN. COCCHIARELLA** asked what if the agency is underfunded. Would he make a commitment to fund these agencies in order to make the bill work. **REP. MOOD** charged that the proposed changes to MEPA would make the agencies task easier.

SEN. KEN MILLER questioned a comment made by **Mr. Barber** that if economically feasible were to affect the taxpayer then Zortman Landusky would not have happened. He asked how much of the tax dollars have been spent on Zortman Landusky. **Mr. Barber** stated that \$15 million has been spent on the clean-up. **SEN. MILLER** questioned if that was tax dollars. **Mr. Barber** told him that tax dollars have not been spent, but they will need to spend that much money. **SEN. MILLER** questioned what taxing entity would have to pay the bill. **Mr. Barber** told him it would be the government. **SEN. MILLER** asked if one of the sources paying for the clean-up would be the hard rock mining tax. **Mr. Barber** told him that could be a possible source. **SEN. MILLER** asked him to justify his statement, when in fact the general taxpayer will not have to pay for the clean-up of the mine. **Mr. Barber** stated that it has not been settled as to who will pay for the clean-up.

Closing by Sponsor:

REP. MOOD stated that MEPA has been in place for thirty years. He charged that the legislature is here to fiddle with laws. They modernize and update them. He declared that after thirty years it is now possible to identify the areas that need work within MEPA. The changes that have been proposed clarify existing law. If a person was to drive into a state that does not have environmental laws a person could not tell the difference. He charged that private entities are able to make money off of timber sales because they have not been saddled by procedural laws. He gave an example of wanting to put Grass Carps into a

golf course pond, the result was a lengthy environmental study. He stated that lawsuits have created large excessive studies. The Montana economy has declined since 1965. He questioned if MEPA is the key to economic development in Montana then why has that trend not reversed in thirty years.

HEARING ON HB 473

Sponsor: REP. CINDY YOUNKIN, HD 28, Bozeman

Proponents: John Youngberg, MT Farm Bureau
Kim Liles, Pulp and Paper Workers
Don Serba, Pulp and Paper Workers
Ed Regan, RY Timber
Tammy Johnson, League of Rural Voters
Patrick Heffernan, MT Logging Association
Dave Skinner, Self
Cary Hegreberg, MT Wood Products Association
Russ Ritter, MT Resources and Open Pitt Mine
Ken Mesaros, Representing Himself
Pat Keim, BNSF
John Bloomquist, MT Stockgrowers
Ronald Buntemeier, F.H. Stoltz Land and Lumber Co.
Mike Murphy, MT Water Resources Association
Peggy Trenk, MT Association of Relators
Aiden Myhre, MT Chamber of Commerce
Gail Abercrombie, MT Petroleum Association
John Semple, MT Cattlewoman
Don Allen, WETA
Frank Crowley, ASARCO

Opponents: Gayla Benefield, Self
John Wilson, MT Trout Unlimited
REP. MONICA LINDEEN, HD 7, Huntley
Janet Ellis, MT Audubon
Anne Hedges, MEIC
Hal Harper, Self
Jeff Barber, MT wildlife Federation, MT Chapter of
the American Fisheries Society
Matt Clifford, Clark Fork Coalition
Jeanne Sugney, Self
Larry Campbell, Representing Himself
Sherm Janke, Self
Julia Page, NPRC
Richard Parks, Self
Matthew Leow, MT Public Interest Research Group

Bill LaCroy, Third Growth Native Plants
Jim Sweaney, Self
Wade Siskorski, Self
Steve Kelly, Friends of the Wild Swan
Mary Westwood, Self

Opening Statement by Sponsor:

REP. CINDY YOUNKIN, HD 28, Bozeman, declared that HB 473 will clarify that MEPA is procedural not substantive. It boils down to the question should MEPA dictate a result or dictate a process. She charged that the legislature rather than the agencies should make the policy. The legislature has not discussed the issue of procedural vs substantive since 1983. She stated MEPA was established to create harmony between humans and the environment. There must be conditions established in which humans and nature can coexist in productive harmony. She proclaimed that Montana cannot have beneficial uses to the exclusion of non-degradation and vice versa. She stated that those two areas must be balanced. She stated that if MEPA is substantive then the process dictates the agencies decisions and forces a particular action. It is not the right of the agency to make permitting laws. However, if MEPA is procedural, then MEPA itself does not dictate a certain result, but rather it is an information gathering process. As long as the decision maker is fully informed the decision maker can make an appropriate decision under the specific circumstances. She maintained that if specific areas in the environment require protection that are not already protected, it is the responsibility of the legislature to create those laws not agencies. She argued that the legislature has shirked it's responsibility by allowing the agencies to create those laws without any direction. That is not good policy. She stated that allowing the agencies to rely upon MEPA to provide the substantive environmental protections does not adequately protect the resource that may need protection. She added that there are no existing guidelines in MEPA to tell the agency how they should protect something. They establish guidelines without input from the legislature.

Proponents' Testimony:

John Youngberg, MT Farm Bureau, stated that if MEPA was meant to be substantive then there would have been no need for further environmental laws. He charged that nearly 150 laws and acts have been passed to fill in the gaps left by MEPA.

{Tape : 4; Side : A}

He urged the committee to change MEPA so that it would reflect the public awareness of the changing economy and environment.

Kim Liles, Pulp and Paper Workers, urged the committee to support the modernization of MEPA.

Don Serba, Pulp and Paper Workers, exclaimed his support for the bill in order to keep Montana families working.

Ed Regan, RY Timber, proclaimed that his company employs 400 individuals. Passage of the bill would settle the question of whether MEPA is substantive or procedural. He added that it would clarify that the legislature is responsible for policy making not the agency. He informed the committee that his helicopter operations were shut down by a MEPA lawsuit.

Tammy Johnson, League of Rural Voters, spoke in favor of the bill and submitted written testimony **EXHIBIT(nas56a10)**.

Patrick Heffernan, MT Logging Association, urged the committee to close the gaps left by MEPA. He claimed that the bill would solve the problems.

Dave Skinner, Representing himself, spoke in favor of the bill and submitted written testimony **EXHIBIT(nas56a11)**.

Cary Hegreberg, MT Wood Products Association, charged that MEPA has gone from a magnifying glass that studies potential environmental hazards to a hammer that stops projects in their tracks. He stated that the current attitude is if all else fails file a lawsuit. He stated that the current law is so nebulous and subjective that it provides legal vulnerability to projects. He declared that it is time to decide if MEPA is substantive or procedural. He urged the committee to get back to the real focus of MEPA.

Russ Ritter, MT Resources and Open Pitt Mine, handed out a copy of the Montana Resources production costs **EXHIBIT(nas56a12)**. He stated that a new mine generation is needed in eastern Montana. He added that the coal there meets all air quality standards. He informed the committee that his company is willing to take risks in order to keep the mine working. He charged that passing this bill is a step in the right direction.

Opponents' Testimony:

Gayla Benefield, Representing herself, spoke in opposition to the bill and submitted written testimony **EXHIBIT(nas56a13)**. (**Ms Benefield** spoke during the proponents testimony time because she had to leave.)

{Tape : 4; Side : B}

Proponents' Testimony:

Ken Mesaros, Representing himself, informed the committee that as a member of the MEPA interim subcommittee they reviewed MEPA at length, but failed to produce adequate recommendations. He stated that MEPA is a process for analyzing environmental impacts. It should not be used to stop or withhold a permit. He charged that it is important to decrease the levels of subjectivity.

Pat Keim, BNSF, stated that he is part of a group whose purpose is to attract industry to Montana. However, the task is difficult because industry does not want to come to Montana because it's policies do not encourage economic growth for a business. He declared that BNSF has lost \$20 million dollars from shippers in Montana who have shut down. He proclaimed that is a threat to the number of employees BNSF can employ. He encouraged the committee to pass the bill in order to curtail shut downs across the state.

John Bloomquist, MT Stockgrowers, declared that MEPA is procedural; courts have upheld that decision. He stated that it is time to put sideboards on MEPA and clarify that it is procedural not substantive.

Ronald Buntemeier, F.H. Stoltz Land and Lumber Co., stated that he has worked under the conditions of MEPA in numerous cases. He added that it is important to clarify the law.

Mike Murphy, MT Water Resources Association, proclaimed that the bill is a reasonable clarification of the MEPA process.

Peggy Trenk, MT Relators Association, surmised that their membership understands what people value. She expressed that the bill does not change an individuals quality of life. If there are gaps she encouraged the legislature to solve those issues.

Aiden Myhre, MT Chamber of Commerce, expressed that the chamber supports the bill for three primary reasons; clarity, legislature should make decisions not agencies and MEPA is a procedural process.

Gail Abercrombie, MT Petroleum Association, stated that the association operates under MEPA and uses it as a procedural document. She charged that they follow the laws. If they operated in a subjective manner they could be accused of "takings".

John Semple, MT Cattlewoman, urged the committee to vote for clarity in MEPA.

Don Allen, WETA, also spoke for **Byron Roberts, MT Building Industry Association**, in support of the bill. He warned the committee not to listen to the rhetoric of the opposition. He contested the quote that good jobs are compatible with a good environment. He declared that MEPA is a good process, but it takes too long and costs too much money.

Frank Crowley, ASARCO, stated that MEPA is a good law as long as it is administered wisely. He charged that the main chunk of the law is in the regulations not the statutes.

Opponents' Testimony:

John Wilson, MT Trout Unlimited, handed out proposed amendments to fill in the gaps left by the bill and a memorandum by **REP. ERICKSON, HD 64, Missoula, EXHIBIT(nas56a14)**. He refuted the comments that the bill does not weaken MEPA. He charged that making it procedural and not substantive is a bad idea. He warned that it is not a good idea to discontinue granting agencies the authority to condition a permit. He stated that the courts have recognized that MEPA is substantive. He questioned why MEPA cannot be both procedural and substantive. He charged that agencies have not used MEPA in a capricious manner. He stated that agencies have used it for safety. He warned that if the bill becomes law it creates new gaps in the ability to protect citizens. He speculated that for thirty years MEPA has been the substantive law used to fill in those gaps. He read aloud from the Erickson memo.

{Tape : 5; Side : A}

He discussed the first proposed amendment and charged that agencies should be allowed to condition a permit if public health or safety is at risk.

REP. MONICA LINDEEN, HD 7, Huntley, told the committee of a situation in her community where MEPA was crucial in solving a community problem. She read aloud and submitted a letter from **Steve Erb, President, Huntley Community Club**, that discussed the issue in detail **EXHIBIT(nas56a15)**. She charged that without the MEPA process her community would have been in serious risk of health damage.

Janet Ellis, MT Audubon, charged that MEPA is both substantive and procedural. She declared that the legislation needs to accept the proposed amendments and pass the bill in order to

provide clarity. She stated that amendment number four would make it clear that on state initiated actions, when the agency is the applicant they would have more latitude.

Anne Hedges, MEIC, handed out a copy of NEPA and a section of the Code of Federal Regulations **EXHIBIT (nas56a16)**. She refuted that individuals are using substantive and procedural in an incorrect manner. She stated that the problem is the bill would prohibit a particular result. She pointed out in several places where MEPA mirrors NEPA. She conceded that the courts have ruled that MEPA is procedural, but the ruling is not what the bill does. She stated that at that level an agency does not have to mitigate. She argued that the bill twists the content of the bill into something that it has never been at the federal level. She declared that the third amendment would make MEPA reflect NEPA. The amendment would establish that individuals cannot sue to stop a project and agencies will not be sued if they understand there is a problem and do nothing about it. She concluded her remarks by quoting Ward Shanahan's testimony given in 1983.

Hal Harper, Representing himself, hypothesized that it does not matter to the committee if MEPA is procedural and substantive. He stated that what matters is that reasonable impediments are not thrown in the way of job creation. He suggested that being forced to decide if the law is procedural or substantive is not the job of the legislature. He charged that the bill puts communities at risk. He stated that the bill weakens environmental protection; the gaps prove it. He warned that the legislature cannot deregulate the environment depending on the whims of the market place.

Jeff Barber, MT wildlife Federation, MT Chapter of the American Fisheries Society, charged that the bill creates a policy of no matter what you see leap anyway. He argued that the bill does not make common sense. He stated that the current process would be prohibited under the language. He alleged that there would be more EIS' at an increased cost. The bill would lead to more lawsuits and a lack of quality information. He maintained that MEPA is an information gathering document. Agencies must be allowed to do their job.

Matt Clifford, Clark Fork Coalition, stated that the bill goes beyond its intended purpose. He argued that the bill limits current powers that agencies have under substantive laws. He said the problem comes from the words, "clear showing and substantial likelihood." He stated that an environmental violation cannot be anticipated. It is important for the agencies to be able to ensure a sufficient margin of safety.

Jeanne Sugney, Representing herself, informed the committee that she spent seven years on the EQC. During that time she worked closely with individuals who had been affected by the Stillwater Mine.

{Tape : 5; Side : B}

She narrated that those individuals were able to mitigate and address those concerns. She gave other examples when mitigation was helpful in conveying public opinion. She asked the committee to consider what MEPA does for communities.

Larry Campbell, Representing himself, told the committee how he resigned his job because of concerns about asbestos in Hamilton. He charged that he is more concerned about human health than income. He questioned if the legislature was willing to do anything about issues like asbestos, instead of fixing things that are not broken like MEPA.

Sherm Janke, Representing himself, expressed his concerns for the gaps in the bill. He accused the legislature of generating more gaps by passing legislation such as the Major Facilities Siting Act.

Julia Page, NPRC, informed the committee that the bill is a step backwards; away from common sense actions by agencies that would protect people and communities from obvious project impacts. She stated that mitigation has helped projects acquire their permits and move forward. She warned that communities would be harmed without the ability to mitigate. She charged that MEPA is not an erroneous project-killing provision.

Richard Parks, Representing himself, declared that MEPA has numerous good points. He gave an example of the Mineral Hill Mine. He depicted that the MEPA process was used and the mine was opened. Now the mine will be closing, but with no harm to the environment. He charged that MEPA documents are important in allowing the public and agencies to make a good decision. He questioned if the agency cannot enforce a permit, can it enforce anything.

Matthew Leow, MT Public Interest Research Group, urged the committee not to vote for the bill based on fear, but on rationality. He warned that the bill would tie the hands of the agencies, which would compromise the protection of the environment and human health.

Bill LaCroy, Third Growth Native Plants, provided the committee with an example of a weed law document. He also urged the

committee not to listen to inflammatory comments made by other proponents.

Jim Sweaney, Representing himself, stated that even though the Gardner Mine closed people are still working. He charged that without MEPA jobs would not exist.

Wade Siskorski, Representing himself, declared that he was opposed to the bill because it decreases public participation in decisions that deeply affect their lives.

Steve Kelly, Friends of the Wild Swan, charged that the bill takes away the ability of the agency to plan. He stated that projects will no longer be monitored.

John Wilson, MT Trout Unlimited, summarized that the gaps in the bill are narrow. He highlighted endangerment of public health, safety, welfare, and harm to wildlife resources.

Mary Westwood, Representing herself, stated that MEPA is an important public policy. She cautioned the committee against making hasty decisions. She claimed that small businesses benefit from MEPA. She proclaimed that dialogue needs to be opened up in Montana. She stated that the bill allows new science to be immediately applied to a project. She expressed her concern for contract law, and professed that a screwdriver would be a better way to describe MEPA, because it allows you to tinker and make things better.

{Tape : 6; Side : A}

Questions from Committee Members and Responses:

SEN. COCCHIARELLA asked if **Ms Hedges** would be supportive of the bill if it were amended with the proposed amendments by the opposition. She said yes she would. **SEN. COCCHIARELLA** asked if she would inform the press of her support and send out mailers. **Ms Hedges** stated that she would.

SEN. TOOLE questioned the concern about clear showing and substantial likelihood on page 3, line 23-25 of the bill. He asked if the language would tie agencies hands. **REP. YOUNKIN** told him that the underlying substantive law is for that purpose. If the underlying substantive law is going to be violated it has to be conditioned. **SEN. TOOLE** wondered what would happen if it is not clear. He stated that according to his understanding agencies that use MEPA monitor it for a while and then revisit it. He questioned if the tool for evaluating environmental concern would be eliminated under the bill. **REP. YOUNKIN** charged

that there is nothing in the bill that eliminates the agencies ability to monitor an application after it has been granted. She stated that there is nothing that limits the ability to monitor a situation and then impose a condition later. **SEN. TOOLE** read aloud from the first line of the bill and charged that the agency would not have that right. **REP. YOUNKIN** disagreed. **SEN. TOOLE** asked if she would resist the first amendment proposed by the opposition. **REP. YOUNKIN** charged that such policies like the Water Quality Act and others do what the amendment is proposing. She stated that if there is an infraction of those acts, then they must be enforced. She proclaimed that if the agency does not have the authority to make laws, then they are making laws without any basis or guidance from the legislature. She argued that the agency is not the policy maker. **SEN. TOOLE** asked if the provisions on page two of exhibit 14 should not be a part of the permitting process. **REP. YOUNKIN** declared that many of the things listed are already covered in the law. She offered the example of asbestos guidelines. **SEN. TOOLE** inquired if she wanted state agencies in a position where once they've identified a risk under MEPA analysis, they would not be allowed to do anything substantive about it. **REP. YOUNKIN** stressed once again that if a risk is identified there are other places in law where the agency can deal with that. **SEN. TOOLE** questioned if she would object to the agency going to the county and stating that there is a problem. **REP. YOUNKIN** said she did not object to the local government regulating that situation. **SEN. TOOLE** wondered why the legislature would put the state agency in a position where they can identify a risk but not do anything about it. He questioned again if she would agree to the first amendment (exhibit 14). **REP. YOUNKIN** said she did not want the amendment because it requires that MEPA be used substantively. **SEN. TOOLE** questioned why she is carrying the bill if it requires an agency to do what she doesn't want them to do. **REP. YOUNKIN** stated she is bringing the bill because of the direction the agencies are finding themselves moving, and the position they are finding themselves in. It is not the agencies job to do what the legislature has failed to do. It puts the agency in the position of making the law rather than implementing it. **SEN. TOOLE** inquired about the questions raised about MEPA and NEPA mitigation. **REP. YOUNKIN** charged that doing a direct comparison of MEPA and NEPA is not fair and accurate. There are numerous federal regulations that go along with it. If an agency is allowed, but not required to implement MEPA substantively the state would be sued for being arbitrary and capricious for not establishing requirements. There needs to be additional laws to back up existing laws.

SEN. TASH asked **REP. YOUNKIN** if she had a problem with the other proposed amendments. She stated that passing all of the

amendments would result in an internal contradiction in the law. She stated that the law needs to be one way or the other. The law needs to be substantive or procedural.

Closing by Sponsor:

REP. YOUNKIN argued that agencies need direction in MEPA. They spend too much time trying to figure out what they can and cannot do. The legislature needs to give agencies direction and take them out of the policy making decisions. She charged that laws force agencies to fill in the gaps, sometimes against their will. She informed the committee that Mr. Janke in the House hearing questioned why she would be carrying the bill because she did not have a mine in her district and she never would. She stated that she has numerous students in her district. This may be the one thing that could help Montana recover from its economic hardships. She stressed that other states in the west do not have a MEPA equivalent and it is no coincidence that these states are able to fund their universities. She wondered if the environmental policy laws have something to do with the lack of economic growth in the state. She stated that it was a recommendation by the EQC that the legislatures do the right thing and decide who will make the law. The legislatures are the policy makers and the ones who are accountable to the taxpayers and voters.

The following exhibits were handed in at the end of the hearing:

Rick Jordan, Representing himself, submitted written testimony in opposition to the bill **EXHIBIT(nas56a17)**.

SEN. JOHN COBB, SD 25, Augusta, submitted his concerns with HB 459 **EXHIBIT(nas56a18)**.

Billings Chamber of Commerce, comments on HB 473 **EXHIBIT(nas56a19)**.

ADJOURNMENT

Adjournment: 8:00 P.M.

SEN. WILLIAM CRISMORE, Chairman

MELISSA RASMUSSEN, Secretary

WC/MR

EXHIBIT (nas56aad)